

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2004-000908-001 DT

03/29/2005

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

MICHAEL LEE CROW

RICHARD D COFFINGER

v.

PHOENIX MUNICIPAL COURT (001)
ROXANNE SONG ONG (001)
PETER VAN HAREN (001)
STATE OF ARIZONA (001)

DENTON A CASEY

PHX CITY MUNICIPAL COURT

MINUTE ENTRY - RULING

This court has jurisdiction over special actions pursuant to Article VI, Section 18, of the Arizona Constitution, and Rule 4, Arizona Rules of Procedure for Special Actions.

This matter has been under advisement and I have considered and reviewed the record of the proceedings from the Phoenix Municipal Court, exhibits made of record and the memoranda submitted.

Acceptance of special action jurisdiction is highly discretionary.¹ Jurisdiction is generally accepted only in those cases in which "justice cannot be satisfactorily obtained by other means,"² and may be assumed to correct plain and obvious errors.³ Rule 3 of the Arizona Rules of Procedure for Special Actions states:

The only questions that may be raised in a special action are:
(a) Whether the defendant has failed to exercise discretion

¹ *Pompa v. Superior Court In and For the County of Maricopa*, 187 Ariz. 531, 931 P.2d 431, 235 Ariz. Adv. Rep. 27 (App. 1997); *State ex rel. McDougall v. Superior Court*, 172 Ariz. 153, 155, 835 P.2d 485, 487 (App.1992).

² *King v. Superior Court*, 138 Ariz. 147, 149, 673 P.2d 787, 789 (1983); see also *Harris Trust Bank of Ariz. v. Superior Court*, 188 Ariz. 159, 162, 933 P.2d 1227, 1230 (App.1996).

³ *Amos v. Bowen*, 143 Ariz. 324, 326, 693 P.2d 979, 981 (App. 1984); *State ex rel. Collins v. Superior Court of State of Arizona*, 129 Ariz. 156, 629 P.2d 992 (1981).

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which he has a duty to exercise; or to perform a duty required by law as to which he has no discretion; or,

(b) Whether the defendant has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority; or,

(c) Whether a determination was arbitrary and capricious or an abuse of discretion.

I find that the issues presented in this case involving whether probation is stayed during the pendency of an appeal to the Superior Court is an issue of statewide concern, and not likely to be addressed in the context of a direct appeal. The issue directly concerns the jurisdiction of the trial court over a criminal defendant placed on probation. I will accept jurisdiction in this case.

Facts

In April of 2000, Petitioner was arrested for DUI violations. On August 31, 2000, Judge Roxanne Song Ong, of the Phoenix Municipal Court, suspended the imposition of sentence and placed Petitioner on probation for three (3) years. Petitioner filed a timely notice of appeal, but due to external issues irrelevant to the case at hand, this court did not hear oral arguments on this matter until April 13, 2004. On May 31, 2004, I issued a minute entry opinion affirming the trial court's judgment and sentence, remanding the matter to the Phoenix Municipal Court. On July 13, 2004, Petitioner filed a motion with the trial court arguing that it lacked personal jurisdiction over Petitioner because his three (3) years of probation had run during the appellate process. The trial court denied the motion and a hearing was held on October 8, 2004 wherein Petitioner was ordered to complete the terms of the sentence previously imposed. On October 12, 2004, Petitioner then filed a notice of appeal, or in the alternative, a petition for special action in the Phoenix City Court seeking to vacate the sentencing. The lower court held a hearing on the matter and ruled that Petitioner's sentencing would not be stayed, and advised Petitioner they he could file a petition for special action with the Superior Court. After completing his sentence on November 2, 2004, Petitioner filed an appeal with the lower court. Again, the lower court advised Petitioner to file a petition for special action with the Superior Court. On December 27, 2004, Petitioner filed a petition for special action with this court.

Issue & Analysis

The only issue before this court is whether the lower court acted in excess of its jurisdiction, abused its discretion, or acted arbitrarily or capriciously when it refused to grant Petitioner's motions regarding his sentence after his unsuccessful appeal. Petitioner's suspended sentence of probation was stayed on appeal, therefore, the lower court had jurisdiction to hear the matter and to execute and enforce the sentence previously imposed on Petitioner.

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Appellant argues that Rule 6, Superior Court Rules of Appellate Procedure-Criminal, only pertains to a jail sentence imposed by the court. That rule reads in part:

Execution of the sentence shall be stayed pending appeal when the defendant posts an appeal bond in accordance with the order of the trial court or when no bond is fixed and the appeal is taken on the defendant's own recognizance.⁴

Petitioner's argument is that the word "sentence" as contained in Rule 6 does not include probation. Petitioner's arguments must fail as too restrictive a definition of the word "sentence". A.R.S. Section 22-372 also provides that in Justice of the Peace courts the execution of the sentence shall not be stayed unless an appeal bond is posted. A.R.S. Section 22-372 also applies to police courts.⁵ More importantly, an expansive definition of the term sentence to include probation, fines, imprisonment, or a combination of all of these is warranted. A.R.S. Section 22-354 makes it clear that a court can sentence a defendant to pay a fine. Similarly, A.R.S. Section 22-352(A) provides:

When the defendant pleads guilty or is convicted either by the court or by a jury, the court shall pronounce judgment on the plea or verdict. Sentence of fine, imprisonment, or both, as the case may be, may be pronounced on the judgment.

Therefore, this Court concludes that Petitioner's sentence, which included three (3) years of probation, was stayed when Petitioner filed his notice of appeal.

After a careful review of the record and Arizona law, I find no abuse of discretion, acts in excess of jurisdiction, or arbitrary or capricious acts by the Phoenix Municipal Court. The City of Phoenix Municipal Court correctly concluded that Petitioner's suspended sentence of probation was stayed during the appeal following the filing of his Notice of Appeal. The probationary term did not expire, because it had not commenced to run until after completion of the appeals process, and following remand back to the Phoenix Court for execution of the sentence. Therefore, I deny all relief requested by Petitioner.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

⁴ Rule 6, Superior Court Rules of Appellate Procedure-Criminal.

⁵ See A.R.S. Section 22-425(B).